IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

C.W.P. No. 5734 of 2004

Date of Decision: September 19, 2006

Vijay Kumar Kamra

…..Petitioner

Vs.

Punjab National Bank and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. D.S. Patwalia, Advocate
for the petitioner.

Mr. S.K. Sharma, Advocate
for the respondents.

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M.M. KUMAR, J. (ORAL)

This petition filed under Article 226 of the Constitution prays for quashing order dated October 6, 2003 (P-21) whereby penalty of dismissal without notice from Bank service is alleged to have been inflicted on the petitioner. The aforementioned order has been upheld by the Appellate Authority vide order dated January 6, 2004 (P-24) which has also been challenged on various grounds.

Before going into the merit of the controversy raised in this petition we may sketch out the skeleton facts. The petitioner was appointed as Clerk-cum-Cashier in the respondent Bank on August 6, 1981. When he was posted at Extension Counter, Khadi Ashram, G.T. Road, Panipat, he was placed under suspension on October 17, 1994 on the allegation of misappropriation/ embezzlement of public fund (P-1) along with Sh. Arun Kumar Singla, Manager and the peon of the Bank Sh. Mohinder Singh. An FIR No. 290 under Sections 406/ 409/ 420/ 467/ 471 IPC was registered at Police Station Sadar, Panipat. The petitioner was acquitted by the criminal Court, however, in the departmental enquiry, he was found guilty of charges and was eventually dismissed from service on October 6, 2003 (P-21). He filed an appeal under the Rules which was also dismissed on January 6, 2004.

The respondent bank in para 1 of its reply has raised a preliminary objection that when the disciplinary action has been taken against a delinquent employee in accordance with provisions of the Bipartite Settlement as amended from time to time, then equally efficacious and alternative remedy under the provisions of the Industrial Disputes Act, 1947, exists and the remedy of invoking the writ jurisdiction of this Court cannot be permitted. In support of the aforementioned preliminary submission reliance has placed on a judgment of Hon'ble the Supreme Court in the case of **Punjab National Bank and another v. Gurwant Singh** (Civil Appeal No. 8504 of 2002, decided on December 16, 2002). In the aforementioned case, another delinquent employee had filed a civil suit

challenging the order of his termination and he had also sought enforcement of his rights and obligation under the provisions of the Industrial Disputes Act, 1947. The trial court held that it had jurisdiction and the order of the trial Court was upheld by the High Court. The Bank had taken the dispute before Hon'ble the Supreme Court. By placing reliance on an earlier judgment of three Judge Bench decision in the case of **Rajasthan State Road Transport Corporation and another v. Krishna Kant and others**, (1995) 5 SCC 75, the Supreme Court held that the civil Court had no jurisdiction and the judgment of the trial Court was set aside. However, it was left open to the delinquent employee to avail the remedy under the Industrial Disputes Act. It would be appropriate to make a reference to proposition 1 and 2 of para 35 as extracted by the Supreme Court from the **Rajasthan State Transport Corporation** case (supra) and the same read as under:-

> "35. We may now summarise the principles flowing from the above discussion:
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> (1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2 (k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves the recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act."

In the present case, the petitioner- workman is seeking to take the benefits of the provisions of the Shastri Award and various Bipartite Settlements arrived at between the parties under the Industrial Disputes Act, 1947. Therefore, in our view, the matter is wholly covered by the judgment of the Supreme Court in **Punjab National Bank's** case (supra) and the preliminary objection raised by the respondent merits acceptance.

Accordingly, we relegate the petitioner to the remedy under the Industrial Disputes Act, 1947. If any such remedy is invoked, then the same shall be disposed of by all concerned expeditiously.

Disposed of in the above terms.

(M.M.KUMAR)
JUDGE

September 20, 2006
sanjay

(M.M.S.BEDI)
JUDGE